In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 08-21C
BID PROTEST

(Originally Filed Under Seal September 16, 2008
(Reissued September 29, 2008)

* *

SAVANTAGE FINANCIAL SERVICES, INC.	*
Plaintiff,	*
v.	*
THE UNITED STATES,	*
Defendant.	*

* *

Timothy Sullivan, Washington, D.C., attorney of record for plaintiff, Savantage Financial Services, Inc., ***Katherine S. Nucci***, of counsel and ***Jon W. van Horne***, of counsel.

A. Bondurant Eley, Department of Justice, Washington, D.C., with whom was ***Acting Assistant Attorney General Jeffrey S. Buckholtz***, for defendant. ***Jeanne E. Davidson***, Director, and ***Bryant G. Snee***, Deputy Director.

OPINION & ORDER

***Futey*, Judge.**

This matter is before the Court on Plaintiff's Motion For Award Of Attorneys' Fees Under The Equal Access To Justice Act, Defendant's Opposition To Plaintiff's Application For The Award Of Fees And Other Expenses Pursuant To The Equal Access To Justice Act, Plaintiff's Reply To Defendant's Opposition, Plaintiff's Amended Fee Request, and Defendant's Response To Plaintiff's Amended Fee Request.

Plaintiff requests that this Court award to plaintiff attorney fees and expenses incurred in connection with Savantage Financial Services'("Savantage") successful

bid protest litigation and the preparation of this Equal Access to Justice Act ("EAJA") claim. Plaintiff argues that it is entitled to judgment in its favor because (1) Savantage meets the EAJA eligibility criteria and is the prevailing party in the underlying litigation, (2) the position of the government was not substantially justified, and (3) the fees and expenses for which payment is requested were reasonable and necessary for the preparation of plaintiff's case. Plaintiff requests fees of $105,386.59 for 614.75 hours of attorney time at the proposed rate of $171.43 per hour, and $936.69 in expenses, totaling $106,323.28.

Defendant opposes plaintiff's motion on several grounds. First, defendant contends that plaintiff has not sufficiently established its eligibility for an EAJA fees award. Second, defendant asserts that the government's position was substantially justified. Third, defendant argues that, if plaintiff is allowed to recover, the claim should be significantly reduced due to duplicative fees and work by three attorneys. Finally, defendant maintains that Plaintiff's Amended Fee Request, which includes additional attorney fees for the hours spent preparing this EAJA claim, is excessive and inappropriate because the fees sought by plaintiff are the result of its failure to support the EAJA application correctly in the first instance.

1. Background[1]

In the underlying action, plaintiff, Savantage, protested what it contended was an improper sole source procurement by the Department of Homeland Security ("DHS") for financial systems application software. DHS was created in 2003 by a merger of 22 separate federal agencies. In 2007, DHS proposed to consolidate its financial systems application software by "migrating" the 22 DHS components from five different software solutions to a shared software baseline. In a Brand Name Justification ("Justification") document, signed by a DHS contracting officer on July 26, 2007, DHS indicated that it had selected two financial management systems - Oracle and SAP - as the baseline for its consolidation initiative.[2] No competition had been conducted for the selection of the baseline, nor did DHS make the Justification and its supporting documentation available for public inspection. In November 2007, DHS issued a solicitation as a task order request for services to manage the migration process to the two financial management systems. The task order request was issued under DHS's Enterprise Acquisition Gateway for Leading-Edge Solutions

[1]Only those facts relevant to this opinion are summarized below. The facts are discussed in greater detail in the Court's opinion granting plaintiff's motion for summary judgment, ***Savantage Fin. Servs., Inc. v. United States***, 81 Fed. Cl. 300, 302-03 (2008).

[2]For purposes of simplicity, the Court will refer to the Oracle and SAP baselines singularly as "Oracle".

("EAGLE") contracts, which are Indefinite Delivery/Indefinite Quantity ("IDIQ") contracts.

On January 11, 2008, Savantage filed a bid protest with this Court seeking injunctive and declaratory relief prohibiting DHS from proceeding with the task order request unless it first complied with applicable statutory and regulatory requirements in its selection of the financial systems application software migration candidate for its consolidation initiative. Defendant's central argument was that, because plaintiff's challenge was to a task order request issued under an existing IDIQ contract, it was precluded from this Court's bid protest jurisdiction by the Federal Acquisition Streamlining Act of 1994 ("FASA").

Following briefing and oral argument, the Court held that DHS's selection of a migration candidate via the Justification was an improper sole source procurement in violation of the Competition in Contracting Act ("CICA"). Specifically, the Court found that it had jurisdiction because DHS's decision constituted a procurement; that Savantage had standing to challenge the procurement because it would have been a qualified bidder had DHS conducted a competition to select a financial management system as its baseline for the consolidation initiative; and that DHS's decision to use certain financial management software systems via the Justification was an improper sole source procurement in violation of CICA. Moreover, the Court found that FASA did not exempt DHS from the requirements of CICA because Savantage was challenging DHS's sole source procurement of financial management software systems, not the task order.

Plaintiff filed its EAJA application with the Court on June 9, 2008. The Court now turns to the merits of that claim.

2. Discussion

The United States Supreme Court has consistently given credence to the "American Rule" which requires each party to bear its own attorney fees unless a statute provides otherwise. ***Hensley v. Eckerhart***, 461 U.S. 424, 429 (1983)(citing ***Alyeska Pipeline Serv. Co. v. Wilderness Soc'y***, 421 U.S. 240 (1975)). The EAJA is a specific waiver of sovereign immunity providing for attorney fees and, like all such waivers, is to be narrowly construed. ***Chiu v. United States***, 948 F.2d 711, 714 (Fed. Cir. 1991). The purpose of the EAJA is to minimize the burden of legal expense where a challenge of unreasonable government action is necessary. ***Gavette v. Office of Pers. Mgmt.***, 808 F.2d 1456, 1459-60 (Fed. Cir. 1986); accord ***Cmty. Heating & Plumbing Co. v. Garrett***, 2 F.3d 1143, 1145 (Fed. Cir. 1993)(explaining that Congress enacted the EAJA to "eliminate legal expenses as a barrier to challenges of unreasonable government action"). A claimant corporation, the net worth of which is less than $7,000,000.00, and which employs less than 500 people at the time of suit may file an application for attorney fees and costs under the EAJA.

28 U.S.C. § 2412(d)(2)(B). The EAJA is not, however, a mandatory fee shifting statute. ***Gavette***, 808 F.2d at 1465.

Section 2412(d)(1)(A) of the EAJA reads as follows:

> Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action . . . brought by or against the United States . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

The EAJA elaborates that "reasonable attorney fees" are encompassed within the category of "fees and other expenses." 28 U.S.C. § 2412(d)(2)(A). The EAJA also provides that the party seeking an award of fees must submit to the court an application that "shows . . . the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed." ***Gonzalez v. United States***, 44 Fed. Cl. 764, 769 (1999)(quoting 28 U.S.C. § 2412(d)(1)(B)).

While the EAJA directs that the amount of "reasonable attorney fees" be calculated on the basis of the "prevailing market rates for the kind and quality of the services furnished," it simultaneously caps the amount at $125.00 per hour. 28 U.S.C. § 2412(d)(2)(A). The $125.00 figure can be exceeded, however, if "the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." ***Id***. at § 2412(d)(2)(A)(ii).

A. *Eligibility*

To prevail on an EAJA claim, plaintiff must meet three requirements: first, plaintiff must demonstrate that its net worth and employment statistics satisfy the requirements of the statute; second, plaintiff must have prevailed in the underlying action; and third, defendant's position in the underlying litigation must not have been substantially justified. *See* 28 U.S.C. § 2412. In order to satisfy the first requirement - eligibility to file an EAJA application - plaintiff must "demonstrably establish, *prima facie*, that [it] meets the referenced 'net worth' limitations;" absent such a showing, the entire claim fails. ***Fields v. United States***, 29 Fed. Cl. 376, 382 (1993). Evidence of plaintiff's net worth must be calculated according to generally accepted accounting principles. *See* ***Lion Raisins, Inc. v. United States***, 57 Fed. Cl. 505, 511 (2003); ***Fields***, 29 Fed. Cl. at 383; ***Scherr Constr. Co. v. United States***, 26 Cl. Ct. 248, 251 (1992). "Net worth, for purposes of the EAJA, is calculated by subtracting

total liabilities from total assets." ***Scherr Constr. Co.***, 26 Cl. Ct. at 251 (citing ***City of Brunswick v. United States***, 849 F.2d 501, 503 (11th Cir. 1988)).

Here, plaintiff originally submitted a sworn declaration of its chief financial officer, Kelly C. Moore, in which she stated that Savantage had a net worth of [*] million and [*] employees when this case was filed on January 11, 2008. In its opposition to plaintiff's motion, defendant challenged plaintiff's EAJA eligibility on the basis that a "conclusory affidavit without supporting documentary evidence is inadequate to establish . . . [sic] 'party' status." Def.'s Opp'n at 8 (citing ***Fields***, 29 Fed. Cl. at 382). Plaintiff then supplemented its EAJA application with a balance sheet evidencing Savantage's assets and liabilities for the periods ending December 31, 2007 and January 31, 2008; a portion of the federal income tax return prepared on Form 112OS to be filed by Savantage for the tax year ending December 31, 2007; payroll records dated January 15, 2008; and a second Declaration of Kelly C. Moore, in which she states under oath that Savantage's net worth on January 11, 2008 was [*], and that the balance sheet was prepared in accordance with generally accepted accounting principles. Defendant subsequently requested permission to have a Justice Department accountant analyze the data provided by plaintiff in order to properly evaluate Savantage's net worth, which the Court allowed. On August 19, 2008, the parties submitted a joint status report in which defendant refused to agree that plaintiff presented conclusive proof of its EAJA eligibility.

Nonetheless, plaintiff has submitted verifiable evidence of its total assets, liabilities, and resulting net worth at the time in question, as well as a sworn declaration that the numbers are accurate and were prepared in accordance with generally accepted accounting principles. Plaintiff has therefore satisfied its evidentiary burden with regard to net worth. Absent a specific allegation calling plaintiff's evidence into question, defendant's general refusal to agree is inconsequential. Because plaintiff employed [*] people and its net worth was under $7 million at the time this case was filed, plaintiff is eligible to apply for attorney fees under the EAJA.

B. *Prevailing Party*

Once EAJA eligibility is established, plaintiff must show that it was the prevailing party in the underlying action. Typically, "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." ***Filtration Dev. Co. v. United States***, 63 Fed. Cl. 612, 618 (2005)(quoting ***Nadeau v. Helgemoe***, 581 F.2d 275, 278-79 (1st Cir. 1978)). Plaintiff here succeeded on all claims in the underlying litigation. *See* ***Savantage Fin. Servs.***, 81 Fed. Cl. 300. Moreover, defendant does not contest plaintiff's status as prevailing party; thus, plaintiff was the prevailing party.

C. *Substantially Justified*

Because plaintiff meets the eligibility requirements of the EAJA and was the prevailing party below, defendant "bears the burden of proving that its position was substantially justified." ***Filtration Dev. Co.***, 63 Fed. Cl. at 619 (citing ***California Marine Cleaning, Inc. v. United States***, 43 Fed. Cl. 724, 729 (1999)). The Supreme Court has defined "substantially justified" as "'justified in substance or in the main' - that is, justified to a degree that could satisfy a reasonable person." ***Larsen v. United States***, 39 Fed. Cl. 162, 167 (1997)(quoting ***Comm'r, Immigration & Naturalization Serv. v. Jean***, 496 U.S. 154, 158 (1990)). To satisfy the substantially justified standard, defendant's position must have a reasonable basis in law and fact. ***Id***. Where defendant's litigation position was "contrary to established legal principles, and was a continued misconstruction of procurement regulations," it lacks a reasonable basis in law and fact. *See* ***Filtration Dev. Co.***, 63 Fed. Cl. at 620 (citing ***PCI/RCI v. United States***, 37 Fed. Cl. 785, 790 (1997)). This determination is to be made on a case-by-case basis. ***Gavette***, 808 F.2d at 1467.

The Supreme Court has cautioned against allowing a negative determination on the merits to transcend that phase of the litigation and dictate the results of an inquiry into whether the government's position was substantially justified. ***Scarborough v. Principi***, 541 U.S. 401, 415 (2004). It is conceivable that "the Government could take a position that is not substantially justified, yet win; even more likely, it could take a position that is substantially justified, yet lose." ***Pierce v. Underwood***, 487 U.S. 552, 569 (1988). While the two inquiries view the circumstances through different prisms, they are nevertheless somewhat intertwined. *See* ***Luciano Pisoni Fabbrica Accessori Instrumenti Musicali v. United States***, 837 F.2d 465, 467 (Fed. Cir. 1988). The United States Court of Appeals for the District of Columbia, however, has gone so far as to state that "[i]n some cases, the standard of review on the merits is so close to the reasonableness standard applicable to determining substantial justification that a losing agency is unlikely to be able to show that its position was substantially justified." ***F.J. Vollmer Co., Inc. v. Magaw***, 102 F.3d 591, 595 (D.C. Cir. 1996).

In the case at bar, defendant asserts that its position in the underlying litigation was substantially justified because it was based on established statutory authority and prevailing case law. The established statutory authority to which defendant refers is FASA, which insulates task order requests under IDIQ contracts from the open competition requirements of CICA. Nevertheless, an IDIQ contract was not at issue in the underlying litigation, despite defendant's continued arguments to the contrary. Defendant never even fully addressed plaintiff's main contention that defendant's selection of financial systems application software via the Justification was an improper sole source procurement in violation of CICA. Moreover, the government's use of the Justification in making its decision indicates that defendant was attempting to consolidate its financial systems software through a sole source

procurement. The statutory authority and case law governing sole source procurements and brand name justifications is clear, and should be familiar to an agency's contracting officer. Not only did the sole source procurement violate CICA, but defendant's exclusive reliance on FASA in the underlying litigation, particularly in light of the Justification, ignored established legal principles and misapplied others.

Defendant argues further, however, that it's reliance on FASA was justified in light of ***Corel Corp. v. United States***, 165 F. Supp. 2d 12 (D.D.C. 2001). In ***Corel***, the Department of Labor ("DOL") elected to standardize its software to Microsoft Word following an internal evaluation process. To implement its standardization decision, DOL obtained quotes on Microsoft Office from authorized resellers of Microsoft products under a National Institute of Health ("NIH") IDIQ contract which allowed "other federal agencies to place delivery orders for computer products . . . on an as needed basis." ***Id***. at 18. Corel then filed a bid protest challenging DOL's standardization decision "on the ground that the decision was not made in accordance with federal procurement law." ***Id***. The District Court granted the government's motion for summary judgment, finding that the "DOL's decision to standardize to Microsoft was not a procurement action governed by CICA," and that, when purchasing Microsoft products, DOL had "elected to utilize procurement procedures expressly authorized by FASA." ***Id***. at 25.

Defendant claims that ***Corel*** is "strikingly similar" to ***Savantage*** because both cases address an agency standardization decision and a subsequent task order request. Def.'s Resp. To Pl.'s Am. Fee Req. at 11-12. Nonetheless, the facts surrounding the standardization decision and task order in ***Corel*** are decidedly different from those in ***Savantage***. Namely, in ***Savantage***, DHS's decision to standardize to Oracle software was a procurement because an acquisition of additional property or services from Oracle was inherent in that decision. In ***Corel***, the decision to standardize to Microsoft and the actual acquisition of Microsoft products were divorced: DOL decided to standardize to Microsoft and then sought to purchase the Microsoft products through a task order request. Consequently, the standardization decision was not itself a procurement. Furthermore, the task order request in ***Savantage*** represents a later step in the implementation process and is therefore entirely distinct from the task order request in ***Corel***. Defendant's reliance on ***Corel*** demonstrates its misconception of both fact and law.

Additionally, defendant contends that its litigation position was formulated upon a reasonable application of ***Ezenia!, Inc. v. United States***, 80 Fed. Cl. 60 (2007), because the argument advanced - and rejected - there was the same as that asserted by Savantage: that the government violated the CICA and FAR requirements for awarding a sole source contract when it placed a task order request. Defendant argues that "every [c]ourt to consider the issue until the present time has rejected . . . the argument that a plaintiff may challenge an agency's selection of an item to be

purchased through a task order under an existing IDIQ contract free and clear of the FASA's statutory bar." Def.'s Opp'n at 15.

Defendant's arguments here, as in the bid protest litigation, reflect a basic misunderstanding of the facts and of plaintiff's complaint. Plaintiff was protesting the improper sole source procurement of software, not the task order request seeking services to assist with the migration to that software. The task order request was not for the purchase of the selected software. This crucial fact makes the government's reliance upon ***Ezenia!*** unreasonable. In ***Ezenia!***, the court specifically stated that a bid protest *would* be proper if the defendant "had chosen to standardize its software with the actual intention of knocking out other parties, for a sole-source procurement." ***Id***. at 63. Moreover, in denying Ezenia!'s challenge to the standardization decision, the court pointed to the fact that the defendant made the decision *through a competitive process*. ***Id***. Here, plaintiff alleged - and the Court agreed - that DHS's decision to standardize was indeed made with the intention of knocking out other parties for a sole source procurement. Defendant's own Justification, which it repeatedly ignored during the merits litigation, supports this finding. Furthermore, defendant failed to identify any competitive process through which DHS decided to standardize its software. Defendant's reliance upon ***Ezenia!*** was therefore unreasonable. As defendant has alleged, all of its arguments were based upon statutory authority and prevailing case law; unfortunately, that statutory authority and case law was not relevant to the facts of this case. Because of defendant's continued misconstruction of these procurement regulations, defendant's position was not substantially justified and plaintiff is entitled to reasonable attorney fees and expenses.

D. *Reasonable Attorney Fees*

Under § 2412(d)(1)(A) of the EAJA, "a court shall award to a prevailing party other than the United States fees and other expenses." The statue elaborates that "fees and other expenses" include reasonable attorney fees. 28 U.S.C. § 2412(d)(2)(A). Nonetheless, "it remains for the district court to determine what fee is 'reasonable.'" ***Filtration Dev. Co.***, 63 Fed. Cl. at 625 (quoting ***Hensley***, 461 U.S. at 433). Duplication of effort is one ground on which a court may properly reduce a fee award; however, "a reduction is warranted only if the attorneys are *unreasonably* doing the same work." ***JGB Enters., Inc. v. United States***, No. 01-680, 2008 U.S. Claims LEXIS 217, at *31 (Aug. 7, 2008)(quoting ***Jean v. Nelson***, 863 F.2d 759, 773 (11th Cir. 1988)(emphasis in original)).

Defendant maintains that the fees and expenses sought by plaintiff should be reduced by at least one-half because there was a "significant amount of unnecessary, excessive, or duplicative effort expended by three lawyers," as well as an enormous expenditure of time spent on communications between the three

attorneys.[3] Def.'s Opp'n at 6, 16-17. Defendant also contests the additional 45.8 hours of attorney time submitted by plaintiff in its Amended Fee Request. Defendant asserts that these hours stem from the fact that plaintiff had to supplement its original EAJA application in order to establish its EAJA eligibility. Thus, defendant contends that the award must be additionally reduced to take into account plaintiff's "own mistakes and inefficiencies." Def.'s Resp. To Pl.'s Am. Fee Req. at 2.

After reviewing the billing records submitted by plaintiff, the Court fails to identify unnecessary, excessive or duplicative efforts by plaintiff's attorneys that would necessitate a reduction in the fee award. In complex or pressing litigation, such as this bid protest, it is not unusual for a firm to assign two or more attorneys to a case to ensure a thorough and expedient product for its client. Moreover, it is a "common and commendable practice," for a client's counsel to encourage the client "to retain a lawyer more experienced in complex or critical litigation." ***JGB Enters., Inc.***, 2008 U.S. Claims LEXIS 217, at *32. That is precisely what occurred here when plaintiff retained the firm of Thompson Coburn LLP to assist Mr. van Horne with the bid protest litigation. Furthermore, defendant's specific contentions of unreasonably duplicative work are not supported by the record. For example, plaintiff's billing records clearly show that each attorney was responsible for a separate section within the briefs, and each attorney reviewed the finished product before filing. This is an entirely reasonable practice. Defendant additionally asserted that time spent on communications between the three lawyers was excessive and unreasonable; however, communication between attorneys working together on a case is imperative, and the Court thus finds that these communications were reasonable. The Court also notes that each of defendant's filings list four attorneys. *See* ***Universal Fidelity LP v. United States***, 70 Fed. Cl. 310, 318 (2006)(comparing the number of government attorneys listed on court filings with the number of plaintiff's attorneys when considering - and rejecting - an argument by the government that plaintiff's counsel had overstaffed the case). The billing records submitted by plaintiff are therefore reasonable.

Defendant's objection to the additional time submitted by plaintiff in its Amended Fee Request for work on the EAJA application is also unwarranted. Courts have consistently held that a plaintiff may recover fees and expenses associated with preparing an EAJA application. *See* ***Filtration Dev. Co.***, 63 Fed. Cl. at 626 (citing ***Comm'r, Immigration & Naturalization Serv.***, 496 U.S. at 156; ***Lion Raisins, Inc.***, 57 Fed. Cl. at 519 n.17 (citing ***Fritz v. Principi***, 264 F.3d 1372, 1376-77 (Fed. Cir. 2001)); ***KMS Fusion v. United States***, 39 Fed. Cl. 593, 603 (1997)(citing ***Schuenemeyer v. United States***, 776 F.2d 329, 333 (Fed. Cir. 1985))). The billing

[3]Defendant also disputed some time submitted by Mr. van Horne on an unrelated matter; plaintiff subsequently reduced its request by one hour. *See* Pl.'s Reply To Def.'s Opp'n at 11.

records reveal that 18.9 hours were submitted for work on plaintiff's EAJA application, and that 44.1 hours were submitted for work on additional, responsive filings. Of those additional 44.1 hours, 17.9 were spent researching, briefing, and preparing materials regarding plaintiff's EAJA eligibility. Defendant contends that plaintiff is not reasonably entitled to fees for time spent correcting its own mistakes. Plaintiff, however, was not correcting its own mistakes; rather, it was expending the necessary resources to properly support an EAJA application. The fact that plaintiff did not sufficiently substantiate its EAJA eligibility until after it had submitted its EAJA application does not render the work repetitive or duplicative - it was simply late. Thus, plaintiff is entitled to fees for the additional hours submitted in its Amended Fee Request.

E. *Cost of Living Adjustment ("COLA")*

The question remains as to what amount of attorney fees plaintiff is entitled. Plaintiff asserts that it is entitled to a COLA. The EAJA provides that "attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living . . . justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii). When a plaintiff seeks a COLA, the "justification for such award is self-evident if the applicant alleges that the cost of living has increased, as measured by the Department of Labor's Consumer Price Index ('CPI')." ***Keeton Corrs., Inc. v. United States***, 62 Fed. Cl. 134, 139 (Fed. Cl. 2004)(quoting ***California Marine Cleaning***, 43 Fed. Cl. at 733); *see also* ***Meyer v. Sullivan***, 958 F.2d 1029, 1035 n.9 (11th Cir. 1992)(explaining that "[t]he Supreme Court has implied that applying a cost-of-living adjustment under the EAJA is next to automatic"). This court has "decline[d] to impose a requirement that an applicant must do more than request such an adjustment and present a basis upon which the adjustment should be calculated." ***California Marine Cleaning***, 43 Fed. Cl. at 733 (internal citations omitted). Plaintiff is therefore entitled to a COLA.

In order to calculate the COLA, courts considering EAJA applications use the CPI from March 1996, the effective date of the amended statutory cap, as a baseline, and then compare that with the CPI for the relevant date. ***Id***. at 734. Plaintiff requests that the Court calculate the COLA comparing the March 1996 CPI with the March 2008 CPI, which was the mid-point during which services were provided. Using the mean or median date of services to determine a COLA has been a common practice of courts; however, this Court has found that the most accurate method of calculating a COLA is the method used in ***Gonzalez***, 44 Fed. Cl. 764. *See* ***Carmichael v. United States***, 70 Fed. Cl. 81, 86 (2006). There, the court calculated the COLA month-by-month by comparing the March 1996 CPI to the CPI for each month in which the attorney billed hours. *See* ***Id***. To do so, the court adjusted the $125 statutory cap for a given month by the percent difference between the March 1996 CPI and that month's CPI, and multiplied the number of hours billed that month by the adjusted rate. *See* ***Id***. The court determined the total award by adding together

all the months for which bills were received. Using this method here, plaintiff's reasonable attorney fees are $104,838.05. Plaintiff has also submitted $936.69 in expenses, which defendant has not contested, and the Court finds reasonable.

3. Conclusion

For the above-stated reasons, plaintiff's motion for attorney fees and expenses is hereby GRANTED. Plaintiff is entitled to an award of attorney's fees and expenses in the amount of $105,774.74. The Clerk of the Court is directed to enter judgment for said amount.

Any party who seeks the redaction of any proprietary or confidential information from the public version of this opinion shall file under seal its request for redactions by September 30, 2008.

IT IS SO ORDERED.

s/Bohdan A. Futey
BOHDAN A. FUTEY
Judge